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GENERAL COUNSEL'S REPORT

² Susie Johnson was the treasurer of record at the time the complaint was filed. Allen Ellison was designated as treasurer on July 22, 2016. See Allen Ellison for Congress Campaign Committee Amended Statement of Organization, filed June 21, 2016.

1 should not be referred to the Alternative Dispute Resolution Office.³ For the reasons set forth
2 below, OGC recommends that the Commission dismiss the allegations that Allen Ellison in his
3 individual capacity, Ellison for Congress Campaign Committee and Allen Ellison in his official
4 capacity as treasurer ("2014 Committee"), violated the Act or Commission regulations with respect
5 to activity by the 2014 Committee, and the allegations that Allen Ellison in his individual capacity,
6 Allen Ellison for Congress Campaign Committee and Allen Ellison in his official capacity as
7 treasurer ("2016 Committee") violated the Act or Commission regulations by failing to disclose the
8 receipt of in-kind contributions.⁴ Additionally, OGC recommends the Commission find no reason
9 to believe that Allen Ellison for Congress Campaign Committee and Allen Ellison in his official
10 capacity as treasurer violated the Act or Commission regulations by failing to disclose the receipt of
11 individual contributions.

12 The Complaint alleges that Respondents violated multiple provisions of the Act and
13 Commission regulations by failing to file reports during the 2014 and 2016 election cycles and by
14 failing to report specific contributions and expenditures: a \$10,440 ballot access fee for the 2014
15 election cycle; a \$100 in-kind contribution in the form of two free tickets to a 2016 fundraiser;
16 unquantified costs associated with campaign literature and the Committee's website during the 2016
17 election cycle; and two small individual contributions during the 2016 election cycle.⁵ Respondents
18 denied the allegations and argued that they had "followed the FEC rules and filed accordingly."⁶

³ The EPS rating information is as follows: Complaint Filed: May 31, 2016. Response from Allen Ellison and Allen Ellison for Congress Campaign Committee Filed: July 26, 2016.

⁴ Ellison sought election to Florida's 17th Congressional District seat in both 2014 and 2016. The 2014 Committee was established on April 29, 2014, as the candidate's principal campaign committee. The 2016 Committee was established on March 16, 2015, and designated the following day as the candidate's principal candidate committee.

⁵ Compl. at 5-7.

⁶ Resp. ¶ 8.

2014 Committee Reporting

Under the Act, an individual becomes a “candidate”—and thus triggers registration and reporting requirements—when he or she receives or makes in excess of \$5,000 in aggregate contributions or expenditures.⁷ Payment of a ballot access fee is considered an “expenditure” for purposes of determining whether the \$5,000 threshold has been exceeded.⁸ Principal campaign committees for House candidates are required to file regular reports of receipts and disbursements.⁹ The value of uncompensated voluntary services are not considered “contributions” and are therefore not reportable.¹⁰ Contributions in a calendar year by an individual that exceed \$200 in the aggregate must be itemized.¹¹

The 2014 Committee issued a \$10,440 check on May 1, 2014, for a ballot access fee that was later refunded.¹² This payment took Ellison over the \$5,000 “candidate” threshold, triggering registration and reporting requirements. The 2014 Committee, however, did not file its first disclosure report until August 2016, and that report did not disclose the receipts that funded the

⁷ 52 U.S.C. § 30101(2), 11 C.F.R. § 100.3(a)(1).

⁸ See MUR 6513/Pre-MUR 517 (Cynthia Rodriguez Matthews) Factual and Legal Analysis at 2, n. 2; MURs 6374 and 6408 (Roly Arrojo for Congress); First Gen. Counsel’s Rpt. at 4; MUR 6315(Alvin M. Greene) Factual and Legal Analysis at 5-6; *but see*, 52 U.S.C. § 30101(8)(b)(xii), 11 C.F.R. § 100.90 (for purposes of determining whether an individual has exceeded the \$5,000 threshold for contributions, ballot access fees paid to any party committee by a candidate or an authorized committee of a candidate are not considered contributions).

⁹ 52 U.S.C. § 30104(a)(2); 11 C.F.R. § 104.3.

¹⁰ 52 U.S.C. § 30101(8)(B)(i), 11 C.F.R. § 100.74. The candidate indicates in his response that he is a “graphic artist and web designer,” and he created the Committee’s website. Resp. ¶ 4. He also indicates that the domain expenses were “small and did not cross the filing threshold.” *Id.* at ¶ 5. Thus, it is possible that in addition to the domain expenses, the web design services the candidate provided may have been reportable if they were provided through his business and met the filing threshold at the time the services were rendered. Even if the services were reportable, it is likely that they did not exceed the itemized threshold and, therefore, may be identified in the Committee’s disclosure reports. See, 52 U.S.C. § 30104(b)(3)(A).

¹¹ 52 U.S.C. § 30104(b)(3)(A).

¹² Compl. Exs. D-E.

1 \$10,440 ballot access fee payment, or explain how the 2014 Committee disposed of the money after
2 it was refunded.¹³

3 The available information supports the allegations that the 2014 Committee failed to file
4 disclosure reports during the election cycle. However, the total amount of the activity at issue is
5 relatively low, and Ellison ultimately did not get on the ballot.¹⁴ Therefore, in furtherance of the
6 Commission's priorities, relative to other matters pending on the Enforcement docket, the Office of
7 General Counsel recommends that the Commission should exercise its prosecutorial discretion and
8 dismiss the allegations that Allen Ellison in his individual capacity, Ellison for Congress Campaign
9 Committee and Allen Ellison in his official capacity as treasurer failed to properly report receipts
10 and disbursements in violation of 52 U.S.C. § 30104(a)-(b).¹⁵

11 2016 Committee Reporting

12 Respondents assert that the 2016 Committee properly reported all contributions and
13 expenditures during the 2016 election cycle.¹⁶ Respondents argue that although Ellison accepted
14 free admission to a fundraiser, he was one of the speakers, so he did not receive an in-kind
15 contribution.¹⁷ We do not know whether Ellison accepted anything other than free admission for
16 himself—and possibly a guest—to the event, but the *de minimis* value of any purported in-kind

¹³ See Statement of Organization (April 29, 2014) (designating the Committee as Ellison's principal campaign committee). The 2014 Committee's first disclosure report showed a zero balance as of April 1, 2016, and did not disclose any previous receipts or disbursements. See 2016 July Quarterly Report (August 21, 2016).

¹⁴ The 2014 Committee's activity did not meet any referral threshold from the Reports Analysis Division to OGC or the Alternative Dispute Resolution Office. Furthermore, the Committee's level of activity is not eligible for the Administrative Fines program.

¹⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁶ Resp. at ¶ 3-8.

¹⁷ See Resp. ¶ 3, see also, 52 U.S.C. § 30104(b)(3)(A), 11 C.F.R. §§ 100.54(a), 100.54(d)(1). The event was a fundraising dinner for the Highlands County Democratic Party, located in Florida. See Compl. at 2; HIGHLANDS COUNTY DEMOCRATIC PARTY, <http://hcdp1.webs.com> (last visited Feb. 27, 2017).

1 contribution does not justify expending resources to determine the facts. Thus, we recommend that
2 the Commission dismiss the allegation that Allen Ellison in his individual capacity, Allen Ellison for
3 Congress Campaign Committee and Allen Ellison in his official capacity as treasurer violated the
4 Act or Commission Regulations by failing to disclose the receipt of in-kind contributions.¹⁸

5 As to website development and campaign literature costs, the Respondents assert that Ellison
6 personally designed and created both, and that the 2016 Committee disclosed all associated
7 reportable contributions and expenditures.¹⁹ As to the two small individual contributions, the
8 Committee argues that it reported both timely on its 2016 July Quarterly Report after Ellison crossed
9 the “candidate” threshold.²⁰ Since there is no information indicating that either contribution was
10 required to be itemized, it is possible that the two small individual contributions were part of the
11 \$5,725.90 of non-itemized contributions disclosed on the Committee’s 2016 July Quarterly Report.²¹
12 Accordingly, we recommend that the Commission find no reason to believe that Allen Ellison for
13 Congress Campaign Committee and Allen Ellison in his official capacity as treasurer failed to report
14 certain contributions and expenditures during the 2016 election cycle.

¹⁸ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁹ Resp. ¶ 4-5. The 2016 Committee reported an itemized disbursement of \$208.06 for “printing services” on the Committee’s 2016 July Quarterly Report. See Ellison for Congress Campaign Committee 2016 July Quarterly Report, filed August 21, 2016, at 14.

²⁰ Resp. ¶ 6-7.

²¹ See 52 U.S.C. § 30104(b)(3)(A), Compl. Exs. L-M (There is no information indicating the amount of the Jan. 1, 2016, contribution by Sean Duclet and no name was attributed to the \$100 contribution received by the Committee on April 17, 2016. Therefore there is no way to determine whether either contribution met the \$200 aggregate threshold for itemized reporting.)

RECOMMENDATIONS

1. Dismiss the allegations that Ellison for Congress Congressional Committee and Allen Ellison in his official capacity as treasurer violated 52 U.S.C. § 30104(a)-(b) by failing to properly disclose receipts and disbursements;
2. Dismiss the allegations that Allen Ellison in his individual capacity, Allen Ellison for Congress Campaign Committee and Allen Ellison in his official capacity as treasurer violated 52 U.S.C. § 30104(a)-(b) by failing to disclose the receipt of in-kind contributions;
3. Find no reason to believe that Allen Ellison for Congress Campaign Committee and Allen Ellison in his official capacity as treasurer violated 52 U.S.C. § 30104(b), by failing to disclose the receipt of individual contributions;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file as to all Respondents.

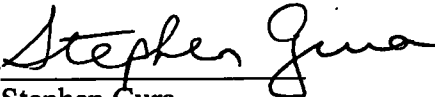
Lisa J. Stevenson
Acting General Counsel

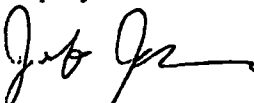
Kathleen M. Guith
Associate General Counsel

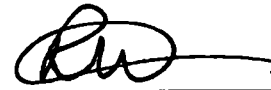
4.5.17

Date:

BY:


Stephen Gura
Deputy Associate General Counsel


Jeff S. Jordan
Assistant General Counsel


Ray Wolcott
Attorney

Attachment:

Factual and Legal Analysis